

**New York Telephone Company and Local 1108,
Communication Workers of America, AFL-
CIO. Case 29-CA-8417**

March 25, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On January 25, 1982, Administrative Law Judge Steven B. Fish issued the attached Decision in this proceeding. Thereafter, the Respondent, New York Telephone Company, filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, New York Telephone Company, Patchogue, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In adopting the Administrative Law Judge's finding that Respondent violated Sec. 8(a)(1) by its warning to Weber that he would get himself in trouble if he persisted in questioning the Switchman about his work duties, Member Hunter does not necessarily adopt all of the Administrative Law Judge's comments concerning how one could characterize Weber's activity nor does he necessarily agree with or rely on all of the precedent cited by the Administrative Law Judge in this connection.

DECISION

STATEMENT OF THE CASE

STEVEN B. FISH, Administrative Law Judge: On October 28, 1980,¹ Local 1108, Communication Workers of America, AFL-CIO, herein called the Union, filed a charge in the instant case.² On December 12, the Re-

¹ All dates are in 1980, unless otherwise stated.

² Respondent, although admitting receipt and service of the charge, contends that Benjamin Lucia is the Charging Party and not the Union. The charge lists as the party filing charge, Benjamin J. Lucia, Local

gional Director for Region 29 issued a complaint and notice of hearing, alleging that New York Telephone Company, herein called Respondent, violated Section 8(a)(1) of the Act by threatening its employees with transfer to less desirable work locations, denial of permission to take time off for personal business, and other reprisals if they refused to withdraw grievances filed pursuant to the provisions of the collective-bargaining agreement in force between Respondent and the Union.

This hearing was held before me on July 16, 1981, in Brooklyn, New York. Briefs have been filed by Respondent and the General Counsel and have been duly considered. Based on the entire record and my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation, with its principal office and place of business at 1095 Avenue of the Americas in New York, New York, and an F.C.C. Control Center in Patchogue, New York, and various other places of business in New York State, is engaged as a public utility in providing telephone communication services and related services in the State of New York. During the past year, Respondent derived gross revenues in excess of \$100,000 and purchased and received in its facilities in New York State, products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New York. It is admitted and I so find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS AND CONCLUSIONS

The Union has been the collective-bargaining representative for certain of Respondent's employees for a number of years. The facilities involved in the instant case are Respondent's Frame Control Center, herein called the F.C.C. or the Frame Control Center, located at 501 North Ocean Avenue, and an office at 22 Bay Avenue, herein called the Bay Avenue office, both located in Patchogue, New York. Arthur Bletsch, herein called Bletsch, Respondent's control office supervisor, is responsible for the supervision of these facilities as well as 11 other facilities located from Sable to Montauk Point, New York. This includes the supervision of 78 bargaining unit employees and 9 supervisors. He deals with 12 or 13 shop stewards in his group, 3 of whom are chief stewards.

1108, CWA, and lists Lucia's address and phone number. The section calling for full name of the National Union is not filled in. The charge is signed by Lucia, with a title listed as chief steward. Lucia testified that the charge was filled out by him at the direction of and of in consultation with David Catalano, a vice president of the Union. Lucia had discussed his problems with Catalano, and they decided that the National Labor Relations Board charge was the route the Union was to take. Based on the above, I find that the Union is the Charging Party herein.

One of these chief stewards is Benjamin Lucia, who is employed by Respondent as a senior frame administrator. Lucia works out of two of Respondent's facilities on an 8-week rotation basis. For 8 weeks he works at the F.C.C. and for the next 8 weeks he works at Respondent's Bay Avenue office alternating with another senior frame administrator. When working at the F.C.C., Lucia performs purely clerical and administrative tasks, such as answering phones, keeping records, and forecasting the next day's work. While at the Bay Avenue office, Lucia, in addition to performing some administrative functions, also performs physical work such as running and cutting wires, doing disconnects, and trunk orders.

For the period from November 1979 through September 1980, there were a total of 13 grievances filed in the Patchogue subdistrict supervised by Bletsch. In the week prior to October 3, 1980, there were eight grievances filed in the subdistrict, all of them arising out of the Patchogue Frame, wherein Lucia is the chief steward. Several of these grievances concerned an issue that had been the subject of prior grievances as well, and had been a recurring problem within Bletsch's subdistrict. That is, a position taken by the Union that work on the frame was for framemen only and that Respondent should not assign this work to switchmen but rather assign it to framemen on overtime.³

On October 2, Lucia and steward Don Munsch met with Bletsch and Foreman Carl Hubbard at the F.C.C. pertaining to three grievances filed by employees Shaffer, Bauman, and Weber, complaining of alleged harassment by Hubbard. Hubbard replied that the men were abusing their breaktime. Lucia and Munsch claimed that they were unaware of these allegations, and would have to check it out with the employees. They indicated the possibility of withdrawing these grievances, and requested that the grievances be put on hold, to which management agreed. During the course of this grievance session, Hubbard accused Lucia of personally soliciting these grievances from the men. Lucia denied this was the case and stated that it was the men's own idea.

After the grievance meeting Lucia and Munsch checked with the employees, who indicated that they had remedied their breaktime problems, still felt that they were being harassed by Hubbard, and wished to pursue the grievances.

The next morning, October 3, Lucia informed Hubbard that the men desired to proceed with the grievances.

At or about 11:30 a.m. that day, Lucia was called into Bletsch's office. Bletsch began the conversation by asking, "What is it about these grievances?" Lucia replied that they had gotten back to the men and the employees wished to proceed with the grievances. Bletsch then continued, "if you pursue these grievances you'll be sorry." Lucia asked if he heard Bletsch right and Bletsch continued, "if these three men pursue these grievances, they'll be sorry."

Bletsch then went on to say that there has not been any grievances for a long time, and that now grievances were being filed, and he did not like it. He brought up

the subject of grievances filed about switchmen working on the frame, and stated that these grievances only cause trouble between switchmen and framemen.

At this point Bletsch brought up the subject of employee Weber. He informed Lucia that Weber had questioned a switchman in Patchogue to find out what the switchman was doing working on the frame and what kind of work he was doing. Bletsch further informed Lucia that the switchman then asked the foreman if he should be working on the frame. The foreman told him to continue working on the frame and ordered Weber to mind his own business, do his own work, and not bother the switchmen. Bletsch after relating this incident to Lucia, said that if Weber continues with his conduct, he is only going to get himself in trouble. Bletsch added that if employees have a problem with switchmen working on the frame, they should grieve it.

Bletsch testified that his reference to "trouble" for Weber included the possibility of a warning, and that he assumed when making his remarks that Weber's questions to the switchman about what the switchman was doing related to Weber's and the Union's position that switchmen should not be performing the work of framemen. Bletsch also testified that the reason for his warning to Weber through Lucia was Weber's alleged harassment of the switchman.

Lucia responded that the solution for Respondent was not to use the switchmen on the frame, but get the framemen back that are needed. Bletsch then ventured the opinion that the problem was that Lucia had solicited the grievances, and not that the men were unhappy. Bletsch added that he had been to the Bay Avenue location that morning, and had seen the employees and they did not appear to be dissatisfied.

Lucia replied that the men were afraid of Bletsch and they came to Lucia with their problems. Bletsch repeated that he was unhappy with all these grievances. Lucia responded that the men are intimidated by Bletsch and that they came to their stewards with their problems. Bletsch at that point stated that "he liked to have the senior framemen⁴ at the F.C.C. stay there, but with the repeated grievances there was a possibility that that might change, with continued grievances and reorganization."

Bletsch continued that "he's been taking a lot of sh— from the framemen and the switchmen and he knows [a lot] of things and he'll just use it if he has to," if the Union pursues these grievances.

Lucia explained to Bletsch that the problem on the Patchogue frame was Hubbard, who only criticized employees and never complimented them. Bletsch replied that at his visit to Patchogue, he had gone through and reviewed the employees' evaluation records, and it was not true. When employees were satisfactory Hubbard wrote them up that way and in fact employee Schaffer, a new framemen had been commended.

Lucia started to bring up problems that he personally had with Hubbard, when Lucia worked under him in the Selden Central office and accused Hubbard of being a

³ The Union has never proceeded to arbitration on any of these grievances. The switchmen are higher paid employees than framemen.

⁴ Note that Lucia was one of the two senior framemen employed in Bletsch's subdistrict.

liar. Bletsch responded that he was not interested in what happened before he came to the subdistrict and he was only interested in the problems now. Lucia repeated that Hubbard was the problem. Bletsch replied that Hubbard is going to remain as foreman and was put there for a reason. He explained to Lucia that productivity had declined in the Patchogue frame, and that Hubbard was placed there to improve productivity. Bletsch also showed Lucia a chart demonstrating the productivity decline at Patchogue.

Lucia then informed Bletsch that they were not getting anywhere and left the office.

The above recitation of facts pertaining to the October 3 meeting between Bletsch and Lucia is derived from a synthesis of the credited portions of the testimony of these two individuals, who were the only witnesses to testify at the instant hearing. In addition to comparative demeanor considerations, I rely in making these findings upon what I perceive to be the most reasonable and logical sequence of the conversation. Lucia recalled the discussions with Bletsch concerning Hubbard being the problem and Lucia calling Hubbard a liar. He also recalled the discussion about Weber and his problem with a supervisor on the Patchogue frame. However Lucia recalled that these discussions occurred at the meetings with Bletsch on dates other than October 3. I believe from the context of the conversation that Lucia was mistaken in this portion of his testimony, and that these matters were in fact discussed at the same October 3 meeting under consideration herein. I also do not credit Lucia in his testimony that Bletsch during the course of the meeting stated that he had been giving the men personal time off for legitimate reasons, but if the grievances continue this might stop. These comments were not included in Lucia's pretrial affidavit, nor in the statement submitted by Lucia attached to the charge that was filed.

Bletsch denied telling Lucia that he or the men would be sorry if they pursue these grievances, or that he might change the assignment of senior framemen to the F.C.C. if grievances continue. He also denied accusing Lucia of personally soliciting grievances, although he admitted that he personally believed this to be the case, in view of his knowledge of Lucia's prior problems with Hubbard. Bletsch also admitted that he was upset about the large number of grievances on file, and that his purpose in meeting with Lucia was to stop or lessen the number of grievances being filed. I find that in view of Bletsch's admitted displeasure with the unusually large number of grievances being filed the week before, and his belief that Lucia was largely responsible for soliciting these grievances, it is reasonable and probable for him to have attempted to dissuade Lucia from engaging in such conduct by making the comments attributed to him by Lucia. I note also Bletsch's admitted comments to Lucia pertaining to Weber, wherein he warned Lucia that Weber was only going to get himself in trouble if he continued with his conduct in regard to questioning employees about switchmen performing framemen work. Although Bletsch and Respondent characterized the warning as prohibitive of "harassment" of employees, it is obvious from an examination of the record testimony on this issue that Weber was engaging in protected con-

certed activity at the time. Thus, the alleged "harassment" referred to by Bletsch consisted merely of Weber questioning an employee about what work he was doing. This questioning was clearly related to the ongoing grievances filed by the Union concerning switchmen performing what the Union and Weber considered to be framemen's work. There are a number of different ways that one could characterize this conduct of Weber, all of them amounting to the conclusion that he was engaging in protected concerted activity at the time. Thus, whether Weber was investigating whether a grievance should be filed,⁵ discussing terms and conditions of employment with other employees,⁶ attempting to protect the jurisdictional right of his craft to perform certain work,⁷ telling an employee that under the contract he need not perform this work,⁸ or simply attempting to enforce what he believed to be a right under the collective-bargaining agreement,⁹ he was clearly engaged in protected concerted activity while questioning the switchman.

The fact that Respondent or even the switchman felt that Weber was engaged in "harassment" of the switchman does not render the activity unprotected.¹⁰ It is also irrelevant that Weber may not have been correct concerning his interpretation of the contract.¹¹

Therefore, the warning to Weber, through Lucia, that Weber will get himself in trouble was in effect a warning to inhibit and in reprisal for Weber's engaging in protected concerted activity. Having admittedly warned Weber because of his pursuit of grievance activity, I find it reasonable to assume that Bletsch would issue a similar warning to Lucia to inhibit his grievance activities, particularly where Bletsch suspected that Lucia was responsible for the solicitation of many of these recent grievances filed in his subdistrict. Thus, it is likely that Bletsch would make the remarks concerning the senior framemen, of which Lucia is one of two, under Bletsch's supervision, and the possibility of not keeping the position and Lucia at the F.C.C. with its less physically demanding job, in an attempt to induce Lucia to cease or curtail his and other employees' grievance activities.

As noted, I have found above that Respondent, by Bletsch an admitted supervisor, informed Lucia that he and the employees would be sorry if they pursued grievances. Similarly Bletsch informed Lucia that with repeated grievances, there was a possibility that senior framemen (of which Lucia was one) might be transferred out of the F.C.C., a location where the job involves less physical work, and appears to be a more desirable location to work. There can be little doubt that these remarks violate Section 8(a)(1) of the Act, as constituting

⁵ *Consumers Power Company*, 245 NLRB 183 (1979).

⁶ *Han-Dee Pak, Inc.*, 249 NLRB 725, 730 (1980); *R. J. Liberto, Inc.*, 235 NLRB 1450, 1453 (1978).

⁷ *Key City Mechanical Contractors, Inc.*, 227 NLRB 1884, 1887 (1977).

⁸ *Jones Dairy Farms*, 245 NLRB 1109, 1112 (1979).

⁹ *John Sexton & Co., a Division of Beatrice Food Co.*, 217 NLRB 80 (1975); *International Packings Corporation*, 221 NLRB 479, 483 (1975).

¹⁰ *International Packings*, *supra* at 482; *Chas. Ind. Co.*, 203 NLRB 476 (1973).

¹¹ *Chas. Ind.*, *supra*; *Sexton*, *supra*.

threats of reprisal for engaging in activities related to the grievance procedure of the contract, and I so find.¹²

Additionally, I have concluded above that Bletsch's admitted remarks to Lucia concerning Weber and the possibility of Weber getting himself in trouble constituted a warning of disciplinary action in reprisal for Weber's protected concerted activity of questioning an employee in connection with his and the Union's position relating to the contract. This conduct is also violative of Section 8(a)(1) of the Act,¹³ and I so find.¹⁴

Having found that Respondent did not threaten its employees with denial of permission to take time off for personal business, I shall recommend dismissal of this allegation of the complaint.

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by threatening its employees with disciplinary action, transfer to less desirable locations, and other reprisals because they engaged in the filing and pursuit of grievances relating to their working conditions, and because they engaged in protected concerted activity.

4. Respondent did not threaten its employees with denial of permission to take time off for personal business, as alleged in the complaint.

5. The unfair labor practices set forth above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁵

The Respondent, New York Telephone Company, Patchogue, New York, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Threatening its employees with disciplinary action, transfer to less desirable locations, or other reprisals because they engaged in the filing or pursuit of grievances

¹² In fact, Respondent concedes in its brief that, if Bletsch were found to have made such statements, it thereby violated Section 8(a)(1) of the Act.

¹³ *International Packings, supra; Hand-Dee Pack, supra; Jones Dairy, supra; Sexton, supra.*

¹⁴ Although not specifically alleged in the complaint, this conduct is encompassed by and closely related to the allegations set forth therein. Moreover this finding is derived from the admitted testimony of Respondent's witness.

¹⁵ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

relating to their working conditions, or because they engaged in other protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Post at its facilities located at Bay Avenue and North Ocean Avenue, Patchogue, New York, copies of the attached Notice marked "Appendix."¹⁶ Copies of said Notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that so much of the complaint alleging unfair labor practices not found herein be dismissed.

¹⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten our employees with disciplinary action, transfer to less desirable locations, or other reprisals because they engaged in the filing or pursuit of grievances relating to their working conditions, or because they engaged in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

NEW YORK TELEPHONE COMPANY